TMAP TAX UPDATES

(July 16, 2022 – August 15, 2022)

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2. Fritz Bryn Anthony M. Delos Santos v. Commissioner of Internal Revenue, GR No. 222548	June 22, 2022 (uploaded on the SC website on July 29, 2022)	Condominium association dues, membership fees, and other charges do not arise from transactions involving sale, barter, or exchange of goods, rendition of services, and the use or lease of properties. The very nature of a condominium corporation negates the application of the National Internal Revenue Code (NIRC) provisions on Value-Added Tax (VAT).	**4**
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DISCUSSION

SUPREME COURT DECISIONS

1. The Final Decision on the Disputed Assessment cannot be considered as the final decision of the Commissioner of Internal Revenue appealable to the Court of Tax Appeals under Section 7(a)(1) of Republic Act No. 1125, as amended.

On April 1, 2011, the CIR issued a Final Decision on Disputed Assessment denying the Petitioner Light Rail Transit's protest to the Formal Assessment Notice. On May 6, 2011, Petitioner Light Rail Transit appealed the Commissioner's Final Decision on Disputed Assessment. On June 9, 2014, the BIR dropped the reinvestigation for the respondent's failure to submit the required documents. The petitioner filed a Petition for Review before the CTA on September 11, 2014. The BIR contended that the Light Rail Transit's Petition for Review was filed out of time. It maintained that the Final Decision on Disputed Assessment is the final decision of the Commissioner on the protest to the assessment; consequently, the 30-day period for filing of the appeal should be reckoned from the day the Light Rail Transit received a copy of the Final Decision on Disputed Assessment.

The Court held that it had jurisdiction over the Petition for Review. Here, there was inaction on the part of the respondent on the petitioner's appeal of the Final Decision on a Disputed Assessment. Considering that the petitioner awaited the decision of the Commissioner on its appeal, it is immaterial that it filed its Petition for Review beyond the 180-day period for the respondent to act on disputed assessments. The Letter denying the petitioner's appeal was the final decision on the protest that is appealable to the CTA. The Final Decision on the Disputed Assessment cannot be considered as the final decision of the Commissioner of Internal Revenue appealable to the Court of Tax Appeals under Section 7(a)(1) of Republic Act No. 1125, as amended. RR 12-99 is clear that if the protest is elevated to the respondent CIR, “the latter’s decision shall not be considered final, executory and demandable, in which case the protest shall be decided by the Commissioner.” The Final Decision on the Disputed Assessment was timely elevated to the Commissioner; hence, it never became final, executory, and demandable. *(Light Rail Transit Authority v. Bureau of Internal Revenue, GR No. 231238, June 20, 2022)*

2. Condominium association dues, membership fees, and other charges do not arise from transactions involving sale, barter, or exchange of goods, rendition of services, and the use or lease of properties. The very nature of a condominium corporation negates the application of the NIRC provisions on VAT.

Petitioner Delos Santos assailed the validity of Revenue Memorandum Circular (RMC) No. 65-2012 which imposed VAT on condominium owners' association dues. Petitioner contends that in paying their association dues, condominium owners do not buy, transfer, or lease any goods, properties, or services from the condominium corporation. The association dues are contributions to defray the condominium's maintenance costs. Moreover, the petitioner invoked the amendment of the Tax Reform for Acceleration and Inclusion (TRAIN) Law, which expressly provides that "association dues, membership fees, and other assessments and charges collected by homeowners associations and condominium corporations” are VAT-exempt.

The Supreme Court declared that the Commissioner of Internal Revenue gravely abused its discretion in issuing the same Circular and declaring that association dues, membership fees, and other assessments or charges are subject to VAT.

The Court reiterated that a condominium corporation is not engaged in trade or business. Association dues are not intended for profit, but the maintenance of the condominium project. The collection of association dues, membership fees, and other charges is purely for the benefit of the condominium owners and not a result of the regular conduct or pursuit of commercial or economic activity, or any transactions incidental thereto.

Condominium association dues, membership fees, and other charges do not arise from transactions involving sale, barter, or exchange of goods, rendition of services, and the use or lease of properties. The very nature of a condominium corporation negates the application of the NIRC provisions on VAT. *(Fritz Bryn Anthony M. Delos Santos v. Commissioner of Internal Revenue, GR No. 222548, June 22, 2022)*

COURT OF TAX APPEALS DECISIONS

1. The judicial claim for a VAT refund shall be filed within 30 days after the receipt of the Commissioner of Internal Revenue's ruling or after the expiration of the 120-day period, whichever is sooner. Any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA.

Petitioner Lead Export filed with the BIR its amended Quarterly VAT Returns for the third and fourth quarters of the taxable year 2008 on September 23, 2009, and November 26, 2009, respectively. Thereafter, it filed applications for a tax credit of its excess and unutilized input VAT from zero-rated sales for the third and fourth quarters of 2008 on October 8, 2009, and December 16, 2009, respectively. On February 13, 2019, respondent CIR denied with finality the applications for tax credit filed by the petitioner were not substantiated with Export Declaration and Bills of Lading/Airway Bills. Petitioner filed a Petition for Review with the CTA on September 5, 2019.

Respondent CIR argued that the Petition for Review was filed beyond the mandatory and jurisdictional 30-day period from the expiration of the 120-day period. Petitioner Lead Export argued that the law did not exclude the available remedy of going to the CTA should the CIR decide to issue a decision after the lapse of the 120-day period.

The Court dismissed the Petition before it for lack of jurisdiction because the judicial claims were filed out of time having been filed an astounding 3,469 and 3,400 days, respectively, from the date when they should have been filed.

The 120-day period within which the respondent is allowed to act on the claims shall be reckoned from October 16, 2001, and September 4, 2002. Whether the respondent rules in favor of or against the taxpayer – or does not act at all on the administrative claim – within 120 days from the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA. The judicial claim for a VAT refund shall be filed within 30 days after the receipt of the Commissioner of Internal Revenue's ruling or after the expiration of the 120-day period, whichever is sooner. Any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA. *(Lead Export and Agro-Development Corporation v. Commissioner of Internal Revenue, CTA EB Case No. 2398, July 21, 2022)*

2. Assessments should be based on fact to stand judicial scrutiny. It is long established that the presumption of correctness of assessments does not apply when the assessment is utterly without foundation.

Petitioner CIR sought to collect deficiency Expanded Withholding Tax(EWT), Income Tax (IT), Value-Added Tax (VAT), Documentary Stamp Tax (DST), and compromise penalty for the taxable year 2012 from Respondent. The CTA Division canceled and set aside the assessment for deficiency IT, VAT, DST, and compromise penalty and ordered the Respondent to pay only the deficiency EWT in the amount of Php 37.05. Hence, Petitioner filed a Petition for Review with the Court En Banc contending that the CTA Division erred in ruling for the cancellation of the assessment for deficiency IT, VAT, DST, and compromise penalty. Petitioner argued that the assessments are presumed correct and made in good faith.

The Court denied the Petition for Review. In ruling for its dismissal, it held that assessments should be based on fact to stand judicial scrutiny. It is long established that the presumption of correctness of assessments does not apply when the assessment is utterly without foundation. In the present case, for the Court to apply the presumption of correctness of the assessment, it is incumbent upon the petitioner to present evidence that would show that his assessment is based on fact and is not arbitrary. However, other than the petitioner's exact reiteration and bar insistence on the correctness of his assessment, he failed to submit sufficient evidence establishing the rational basis and foundation of the deficiency income tax, VAT, and DST assessment as well as establishing the propriety of the imposition of compromise penalty. Thus, the petitioner's contention on the presumption of correctness of the assessment must fail. *(Commissioner of Internal Revenue v. Iconic Beverages, Inc., CTA EB Case No. 2345, July 21, 2022)*

3. An audit and examination of a taxpayer's books and accounting records, to be valid, must be based on a valid LOA. Assessments emanating from Mission Orders are inescapably void.

Petitioner conducted an audit investigation against the Respondent under a Mission Order issued to validate and verify respondent's Importer's Sworn Statement and inspect the books of accounts on importations/sales of automobiles.

The Court En Banc affirmed the conclusion of the CTA Division that "the revenue officers involved in this case were not authorized under an LOA to conduct an examination and inspection of petitioner's books of accounts, their authority having emanated from a Mission Order, the assessments resulting therefrom are inescapably void."

A Mission Order is issued to authorize the surveillance, not the audit and assessment, of the taxpayer. The allowable acts covered by a Mission Order include the tax agent's observation/surveillance of the taxpayer's business operations, verification of specific documents, and his/her determination of whether the taxpayer complies with the pertinent Tax Laws and Regulations without conducting a full-blown audit. RMO No. 003-2009 provides that if the result of the surveillance made indicates that the veracity of the taxpayer's accounting records is not reliable, an LOA must still be issued for the audit and assessment of the taxpayer. *(Commissioner of Internal Revenue v. Autostrada Motore, Inc., CTA EB Case No. 2375, July 21, 2022)*

4. A foreign corporation with a branch office is deemed to be doing business in the Philippines. It cannot be classified as a non-resident foreign corporation for purposes of taxation. Thus, the services rendered to it would not qualify for VAT zero-rating.

Petitioner filed with the BIR its administrative claims for tax credits/refunds arising from its zero-rated transactions. The BIR denied the petitioner's administrative claims for a refund. Petitioner argues that the CTA Division erred in ruling that Marubeni Corporation – Japan could not be considered a non-resident foreign corporation because a company is registered with the Securities and Exchange Commission with the name Marubeni Corporation. According to the petitioner, such is merely the Philippine Branch Office of Marubeni Corporation – Japan, and the petitioner's transaction was with Marubeni Corporation – Japan.

In a CTA Resolution, the Court categorically held that a foreign corporation with a branch office is deemed to be doing business in the Philippines. It cannot be classified as a non-resident foreign corporation for purposes of taxation. Thus, the services rendered to it would not qualify for VAT zero-rating.

In this case, the petitioner failed to present proof of registration or foreign incorporation of Marubeni Corporation Japan. As to Marubeni Corporation, the petitioner failed to present its SEC Certificate of Non-Registration. Neither Marubeni Corporation-Japan nor Marubeni Corporation can be considered as NRFC doing business outside the Philippines. Thus, the commissions earned and received by the petitioner from either of them failed to qualify for VAT zero-rating. *(Maxima Machineries, Inc. v. Commissioner of Internal Revenue, CTA EB No. 2485, July 25, 2022)*

5. A Permit to Operate is a condition sine qua non before engaging in business as an importer of automobiles.

Section 11 of RR No. 25-2003 provides that any person who desires to engage in business as an assembler/manufacturer importer, or dealer of automobiles shall, before the start of business operations, be required to register with the BIR. Moreover, Part II(2) of BIR RMO No. 35-2002 states that the BIR shall not accept an application for Authority to Release Imported Goods (ATRIG) if the importer-applicant does not have a Permit to Operate. An importer engaged in the business of importing automobiles must secure a BIR Permit to Operate and such permit is a pre-requisite for the issuance of ATRIG.

Petitioner's act of importing the subject motor vehicles (intended for sale in the Philippines) without securing the requisite BIR Permit to Operate as Importer of Automobiles warrants the seizure and forfeitures of the subject motor vehicles in favor of the government. *(Gamma Gray Marketing v. Bureau of Customs, CTA Case No. 9855, July 27, 2022)*

6. A party adversely affected by a decision or ruling of the Commissioner of Customs (COC) may file an appeal with the CTA within 30 days after the receipt of such decision or ruling.

Warrants of Seizure and Detention were issued against Petitioner Monacat Trading's imported vehicles due to misdeclaration and gross undervaluation. In a Decision, the COC ordered the forfeiture of the subject vehicles in favor of the government. Petitioner filed before the Office of Respondent COC a Motion for Reconsideration to the assailed decision. On May 3, 2018, Petitioner allegedly received a copy of the assailed Order denying its Motion for Reconsideration.

The Court ruled that it had no jurisdiction over the case. A party adversely affected by a decision or ruling of the Commissioner of Customs may file an appeal with the CTA within 30 days after the receipt of such decision or ruling.

In support of the petitioner's claim on the timeliness of the appeal, it offered as evidence respondent COC's assailed Order as its Exhibit "P-1". However, the Court denied the evidence as it was not duly identified by a competent witness. With the denial, the Court is prevented from properly determining the timeliness of the instant petition. Hence, the Petition for Review must fail. *(Monacat Trading v. Commissioner of Customs, Bureau of Customs, CTA No. 9851, August 4, 2022)*

7. The Court may rule upon the issue of the lack of a Letter of Authority even if it was not raised during the administrative proceedings before the BIR.

Based on a Letter Notice served by the BIR, the BIR issued a PAN, FAN, and FDDA to Respondent Geniographics on the alleged deficiency Income and VAT for the taxable year 2012. The issue of lack of LOA was raised by the respondent for the first time on appeal before the CTA when it failed to raise the issue at the administrative level before the BIR.

The CTA En Banc ruled that the deficiency tax assessment is null and void because the BIR had no authority to issue an assessment against the respondent. A Letter Notice is different from an LOA. It is served only to notify the taxpayer that a discrepancy is found based on the BIR's RELIEF System. An LOA is indispensable under tax assessments as a requirement for due process. A mere Letter Notice cannot ensure the observance of due process.

The CTA also held that it may rule upon the issue of the lack of a Letter of Authority even if it was not raised during the administrative proceedings before the BIR. This is based on Section 8 of RA No. 1125 which provides that the CTA shall be a court of record. As such, it is required to conduct a formal trial where the parties may raise new matters not taken into consideration during the administrative proceedings before the BIR. *(Commissioner of Internal Revenue v. Geniographics, Incorporated, CTA EB No. 2357, August 8, 2022)*

REVENUE MEMORANDUM CIRCULARS

1. Revenue Memorandum Circular No. 102-2022

Publishing Fiscal Incentives Review Board (FIRB) Resolution No. 017-22 – Grant of Authority to Implement a 70:30 Work-from-Home (WFH) Arrangement for Registered Business Enterprises (RBEs) in the Information Technology – Business Process Management (IT-BPM) Sector

The Resolution authorized the implementation of a 70:30 WFH arrangement for IT-BPM RBEs where the number of employees under a WFH arrangement shall not exceed thirty percent (30%) of the total workforce of the RBE, while the remaining seventy percent (70%) of the total workforce shall render work within the ecozone/freeport zone from April 1, 2022, until September 12, 2022, only.

2. Revenue Memorandum Circular No. 103-2022

Publishing FIRB Resolution No. 018-22 – Granting the Board of Investments (BOI) Authority to Implement Temporary Measures for RBEs Affected by Typhoon Odette

The Resolution authorized the BOI to implement temporary measures until December 21, 2022, or until Presidential Proclamation No. 1267 has been lifted, whichever comes earlier, and subject to the terms and conditions stated in the RBE's respective registrations. Such measures include the movement of the start of commercial operations and the reckoning date of Income Tax Holiday (ITH) and deferment of the ITH availment.

3. Revenue Memorandum Circular No. 112-2022

Publishing the Full Text of the June 27, 2022 Letter from the Food and Drug Administration (FDA) of the Department of Health (DOH) Endorsing Updates to the List of VAT-Exempt Medicines under RA No. 11534 Known as the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act

In connection with the list of VAT-exempt medicines under the CREATE Act, the letter of the FDA endorses for inclusion of certain medicines prescribed for tuberculosis and the deletion of certain medicines prescribed for COVID-19 treatment.

4. Revenue Memorandum Circular No. 115-2022

Lifting the Suspension on the Issuance of Mission Orders for the Conduct of Tax Compliance Verification Drive (TCVD)

In connection with RMC No. 77-2022 dated May 30, 2022, which suspended the examinations and verifications of taxpayer's books of accounts, records, and other transactions, the suspension of the issuance of Mission Orders (Mos) insofar as authorizing Revenue Officers to conduct TCVD, which includes verification of complaints involving alleged violations of the NIRC, as amended is hereby lifted effective immediately.

5. Revenue Memorandum Circular No. 116-2022

Publishing the Full Text of the July 11, 2022 Letter from the Food and Drug Administration (FDA) of the Department of Health (DOH) Endorsing Updates to the List of VAT-Exempt Medicines under RA No. 11534 Known as the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act

In connection with the list of VAT-exempt medicines under the CREATE Act, the letter of the FDA endorses for inclusion of certain medicines prescribed for hypertension, diabetes, high cholesterol, kidney diseases, and cancer, and the deletion of certain medicines prescribed for COVID-19 treatment.